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| 09/589,585  | 06/07/2000  | Jennifer Pearson     | 2043.025US1                     | 8996                        |
| 49845   | 7590        | 01/06/2009           |                                 |                             |
| SCHWEGMAN, LUNDBERG & WOESSNER/EBAY<br>P.O. BOX 2938<br>MINNEAPOLIS, MN 55402 |             |                      | EXAMINER<br>NGUYEN, MAIKHANH    |                             |
|   |             |                      | ART UNIT<br>2176                | PAPER NUMBER                |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM

### Office Action Summary

**Application No.**

09/589,585

**Applicant(s)**

PEARSON ET AL.

**Examiner**

Maikhanh Nguyen

**Art Unit**

2176

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13-15, 19-24 and 26-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-15, 19-24 and 26-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/C)
- Paper No(s)/Mail Date 8/8/08 & 10/30/08
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is responsive to the Amendment filed 10/30/2008.

Claims 13-15, 19-24, and 26-29 are currently pending. Claims 1-12 and 25 have been cancelled. Claims 13, 19, and 26 have been amended. Claims 27-29 have been added. Claims 13, 19, 26, and 27 are independent claims.

### **Claim Rejections - 35 USC § 101**

2. 35 U.S.C. 101 reads as follows:

*Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.*

Claims 27-29 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 27-29 recite a method comprising steps that may be performed mentally and/or manually by a human being. Thus, the method neither explicitly recites another statutory class of invention (i.e., a machine, a

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manufacture or a composition of matter) nor inherently requires the use of a particular machine or apparatus. Accordingly, the recited invention is nonstatutory subject matter.

### Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

*(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.*

*This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).*

Claims 13-15, 19-24, and 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Hess et al.** (US 7007076, issued 02/28/2006) in view of "JavaScript Handout 2" (hereinafter **JavaScript**), Hypermedia Production, 3pgs - the reference was cited by Applicant in the IDS filed 03/28/2007.

#### **As to claim 13:**

Hess teaches a computer-readable medium having stored thereon executable instructions for causing a computer (*e.g., client*) to perform a utility program

(e.g., a *Web browser*) for selecting images for a markup language document (e.g., *HTML*) [See Col. 4, lines 15-38] comprising:

- determining a number of images to display in the markup language document [See Col. 5, line 26 - Col. 6, line 67 and Col. 9, line 60 – Col. 10, line 18: a *Gallery<sup>TM</sup>* presentation format, such as that illustrated in FIG. 9, that includes thumbnail images of the items for sale ... a query specifying a category and a page number, the listing management process 415 generates *HTML* describing to the user's browser how to gather and compose the web page ... the *HTML* may contain image tags referencing thumbnail images stored in the thumb database 440];
- retrieving images from a group of images, each retrieved image being associated with an item represented in that retrieved image [See Col. 5, line 44 - Col. 6, line 28; Col. 7, line 58 -Col. 8, line 48; and Col. 9, lines 26-39: *Clients 470 interact with the thumbnail management process 435 to receive image data associated with the Gallery format ... harvesting images to be associated with the items, and presenting items to prospective buyers*]; and
- placing the retrieved images in the markup language document [See the Abstract and Col. 2, lines 18-36: *Images are harvested from a plurality of sites based upon user-supplied information. The user-*

*supplied information includes descriptions of items for sale and locations from which images that are to be associated with the items can be retrieved. Thumbnail images are created corresponding to the harvested images and are aggregated onto a web page for presentation at a remote site].*

Hess, however, does not explicitly teach “obtaining a set of random numbers, the set of random numbers containing a plurality of random numbers, a number of the plurality of random numbers being equal to the determined number of images; and retrieving images from a group of images using the set of random numbers, each retrieved image being associated with an item represented in that retrieved image.”

JavaScript teaches obtaining a set of random numbers (*See the first page: the instructions that choose images at random*], the set of random numbers containing a plurality of random numbers, a number of the plurality of random numbers being equal to the determined number of images [*See the second page: Generating random numbers ... pick any number between 1 and x ... involves placing your randomizer within a while loop ... it tells the browser to come up with new random number if the present number (randy) matches the previous number (randyOld) ... since the While statement must have two values to compare, and since it will only generate a random number if those two values are identical, you have to give randy and randyOld the same initial*

*value*]; and retrieving images from a group of images using the set of random numbers, each retrieved image being associated with an item represented in that retrieved image *[See the first page: preload images with the random-number function ... this function returns integers between 1 and some maximum]*.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify JavaScript with Hess because it would have enhanced the online trading experience by providing buyers with a mechanism to more quickly preview items for sale.

**As to claim 14:**

Hess teaches validating the retrieved images against validation criteria; and retrieving a replacement image from the group of images if a retrieved image fails the validation *[See Col. 7, line 58 – Col. 8, line 49]*.

**As to claim 15:**

Hess teaches determining a location in the document for each of the retrieved images from an instruction embedded in the document *[See the Abstract: The user-supplied information includes descriptions of items for*

*sale and locations from which images that are to be associated with the items can be retrieved].*

**As to claim 19:**

Refer to the rejection to claim 13 above. It is noted that claim 19 does not require “the set of random numbers containing a plurality of random numbers, a number of the plurality of random numbers being equal to the determined number of images.”

**As to claim 20:**

Hess teaches the utility program causes the processing unit to place the selected images in a location defined in the instruction [*See Col. 9, lines 6 – 59*].

**As to claim 21:**

Hess teaches the instruction specifies the number of images to display [*See Col. 9, lines 6 – 59*].

**As to claim 22:**

Hess teaches an administration program that causes the processing unit to create a group of images from which to select the number of images [*See the Abstract; Col. 3, lines 35 – 57; and Col. 5, lines 26- 53*].



**As to claim 23:**

Hess teaches the computer system is a web server and the markup language document is a web page [See Col. 4, lines 17- 38 and Fig. 2: *client-server environment, such as the World Wide Web (the Web), in which online commerce may take place. The architecture of the Web follows a conventional client-server model*].

**As to claim 24:**

Hess teaches the web page contains images of items being auctioned on a web site hosted by the web server [See Col. 1, lines 30 -65 and Col. 5, lines 16-36: *Gallery.TM. presentation format, such as that illustrated in FIG. 9, that includes thumbnail images of the items for sale*].

**As to claim 26:**

Refer to the rejection to claim 13 above. Claim 26 is the same as claim 13, except claim 26 is a system claim and claim 13 is a computer-readable medium claim.

**As to claims 27-29:**

Refer to the rejection to claims 13-15 above. Claims 27-29 are the same as claims 13-15, except claims 27-29 are method claims and claims 13-15 are computer-readable medium claims.

### Response to Arguments

4. Applicant's arguments filed 10/30/2008 have been fully considered but are deemed to be moot in view of the new grounds of rejection necessitated by Applicant's amendments.
5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

### **Contact information**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maikhanh Nguyen whose telephone number is (571) 272-4093. The examiner can normally be reached on Monday - Friday from 9:00am – 5:30 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Hutton can be reached at (571) 272-4137.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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